

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4626 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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G V CHAUHAN & ORS.

Versus

DIRECTOR GENERAL OF POLICE

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Appearance:

MR PITAMBER ABHICHANDANI for Petitioners

MR HL JANI for Respondents

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 06/03/97

ORAL JUDGEMENT

1. Heard learned counsel for the parties. The petitioners, Police Constables-Drivers in M.T. section of the Police department of the State of Gujarat, filed this Special Civil Application before this Court and prayer has been made for the direction to the respondents to consider their cases for promotion to the post of Head Constable from the date when they were first time due and/or from the date when their immediate juniors were

promoted as Head Constables. In the alternate, it has been prayed to quash and set aside the action of the respondents in not granting them the other allowances on special pay.

2. The petitioners have admitted that they have been offered the promotion to the post of Head Constable between 1979 to 1985, but they themselves had declined the promotion. So the petitioners are not correct to contend that they have been denied the promotion. They themselves had declined the promotion, and as such, the juniors have rightly been given the promotion.

3. The petitioners have given out the reason in the Special Civil Application for declining the promotion. A special pay of Rs.20/- and subsequently Rs.50/- was attached to the post of Constable-Driver. This special pay was taken to be the basic pay and the petitioners were given other allowances on the basis of taking that special pay to be the basic pay. So they were getting the basic pay of Rs.310/- and other allowances thereon, and as such, their pay was much more than what they would have got in case of their acceptance of promotion. The acceptance of promotion, what the petitioners contended, would have put them to disadvantageous position i.e. reduction in the pay scale. With effect from 1-1-1986 though the Special pay has been increased to Rs.100/-, but it has been not treated to be the part of the basic pay. So they were not getting any allowances on this special pay. After 1-1-1986, as the special pay was not taken to be the part of the basic pay, the petitioners have felt aggrieved of the said action and filed this Special Civil Application.

4. The counsel for the petitioners contended that the petitioners were put to double loss. First, they have declined the promotion as they were getting much higher pay than what they would have received on promotion, but now on discontinuation of the special pay to be the basic pay, they have been put to monetary loss, as in case of their promotion at due time their salary would have been much more than what they now are getting inclusive of special pay of Rs.100/-, and second that the allowances which are being paid to the petitioners on the special pay have been taken away.

5. The petitioners have made an alternate prayer for direction to the respondents to give them other allowances on the special pay but as the special pay is never a basic pay and rightly it was not taken to be so by the respondents. However, it is an admitted case that till 1-1-1986, the special pay was taken to be the part

of the basic pay and on which the petitioners were receiving the other allowances. At the time of offer of the promotion to the petitioners, they had a reason and I may say a good reason to decline the promotion. The promotion is accepted for one of the reasons that the pay of the employee/officer is increased. No officer or employee likes to have the promotion where his pay is likely to be reduced. So the claim of the petitioners for promotion with effect from the date on which they became due or when their juniors were promoted may have no substance, but their claim for consideration for promotion from 1-1-1986 and on being found suitable for promotion from the said date may have some justification. But the petitioners have filed this Special Civil Application in the year 1988 before this Court. The date of filing of the Special Civil Application is 11th March, 1988.

6. So the interest of justice will be met in case this Special Civil Application is disposed of with the direction to the respondents to consider the case of the petitioners for promotion to the post of Head-Constable as on 11th March, 1988, and in case, the petitioners or some of the petitioners are found suitable for promotion to the post of Head-Constable on the said date then the petitioners or the petitioners who are found suitable, as the case may be, shall be entitled for all the consequential benefits which follow therefrom. This exercise is to be undertaken by the respondents within a period of three months from the date of receipt of certified copy of this order and the consequential benefits have to be given to them within a period of three months next thereafter. The Special Civil Application and the rule stand disposed of accordingly with no order as to costs.

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